

### **REMARKS**

Attached hereto is an Excess Claims Fee Letter for an excess independent claim.

Claims 1-11 are all the claims presently pending in the application. New claim 11 has been added.

It is noted that the claims have been amended solely to more particularly point out Applicant's invention for the Examiner, and not for distinguishing over the prior art, narrowing the claim in view of the prior art, or for statutory requirements directed to patentability.

Claims 1, 4-5, 7 and 9 stand rejected under 35 U.S.C. 102(b) as being anticipated by "Company Makes Science Out of Shopping Trends" Boston Business journal. Claims 2-3, 6, 8 and 10 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Technology Strategy Inc.

These rejections are respectfully traversed in view of the following discussion.

### **I. THE CLAIMED INVENTION**

Applicant's invention, as defined for example in independent claim 1, and substantially similarly in independent claims 9 and 10, is directed to a method suitable for projecting demand, including identifying a first set of merchandise and specifying a second set of merchandise which is to be used as a referent for soliciting information relative to demand behavior for a pre-determined attribute of the first set of merchandise. The second set of merchandise is clustered for generating a demand profile for the pre-determined attribute of the first set of merchandise. The second set of merchandise is clustered for generating a demand model correlated to model-based demand attributes of the first set of merchandise. The generated demand profile and the generated demand model are combined into a single encompassing model which is capable of projecting demand of the first set of merchandise.

An exemplary configuration of the method for projecting demand is shown in Figure 1 of the application.

The conventional systems, such as those discussed below and in the Related Art section of the present application, do not have such a structure, and fail to provide for such an operation.

Indeed, such features are clearly not taught or suggested by the cited references.

## II. THE PRIOR ART REJECTION

The Examiner alleges that the brief article by Jennifer Merritt entitled "Company Makes Science Out of Shopping Trends", as printed in the Boston Business Journal on September 3, 1988, related to Technology Strategy, Inc., anticipates claims 1, 4, 5, 7, and 9 and renders obvious claims 2, 3, 6, 8, and 10.

Applicants disagree.

Most important, this article is non-enabling. Indeed, it can only be expected that a business report is intentionally non-enabling in order to protect the details of the method that Technology Strategy does not want the public to know, since Technology Strategy certainly wishes to charge for its services. That is, if its clients could decipher the details of the method, they would themselves use this method and save the cost charged by Technology Strategy.

At most, the only hint to the details used by Technology Strategy are contained in a few isolated sentences and words, as follows:

- In paragraph 3 of page 1, Technology Strategy's method is described as: "... a little bit of science and extensive mathematical modeling ...."

- In paragraphs 1-4 of page 2, the method is described as: "... a team of Ph.D.s to work on each client's particular case, analyzing historical data from at least three previous years-- including merchandise sales, markdown figures and inventory statistics. From there, TSI uses a complex mathematical model to create a graphic overlay comparing predicted sales and necessary inventory levels to each retail department's merchandise plan. The gaps on the graph between the merchandise plan levels and the forecast levels show the retailer where overplanning may be occurring, giving the retailer a heads-up on potential overstock. In practice, the retailer can then cut back an order or reallocate inventory from one region to another based on regional sales forecasts, saving time and money, said Friend. In its role, TSI has been able to integrate all levels of buying, distributing, and pricing, providing information on both overall retail trends and even in individual clothing classes (such as shirts, pants or jackets)."

However, to one of ordinary skill in the art, nowhere does the above sentences teach, suggest, or render obvious the present invention as defined by the claims. It is the Examiner who injects the details described by the claims, not the article itself.

That is, nowhere does these sentences even suggest that:

- a first set of merchandise and a second set of merchandise are established, such that the second set will be used as a referent for the first set; and
- clustering is used on the referent set of data in order to develop a model correlated to the first set.

Moreover, the wording in the article actually suggests a technique quite different from that used in the present invention. That is, the wording "... analyzing historical data from at least three previous years-- including merchandise sales, markdown figures and inventory statistics. From there, TSI uses a complex mathematical model to create a graphic overlay comparing predicted sales and necessary inventory levels to each retail department's merchandise plan" strongly suggests that an analysis of each article in inventory is obtained from historical data.

There is absolutely no suggestion in these words that one article is used as a referent for another article. Nor is there any suggesting that clustering is used in any way, let alone the manner defined by the independent claims.

It is totally irrelevant that the method of Technical Strategy is purported to result in a predictive model for inventory if the description does not explain how the predictive model is obtained.

Hence, turning to the clear language of the claims, there is no teaching or suggestion of "... (i) identifying a first set of merchandise; (ii) specifying a second set of merchandise which is to be used as a referent for soliciting information relative to demand behavior for a pre-determined attribute of said first set of merchandise; (iii) clustering the second set of merchandise for generating a demand profile for said pre-determined attribute of said first set of merchandise; (iv) clustering the second set of merchandise for generating a demand model correlated to model-based demand attributes of said first set of merchandise; and (v) combining the step (iii) demand profile and the step (iv) demand model into a single encompassing model which is capable of projecting demand of the first set of merchandise", as clearly required by independent claim 1.

For the reasons stated above, the claimed invention is fully patentable over the cited references.

Moreover, relative to the rejection for claims 2, 3, 6, 8, and 10, the Examiner is understood as having invoked Official Notice. Applicants request that the Examiner provide a reasonable reference for each invocation.

Further, the other prior art of record has been reviewed, but it too, even in combination with the Technical Strategy article, fails to teach or suggest the claimed invention.

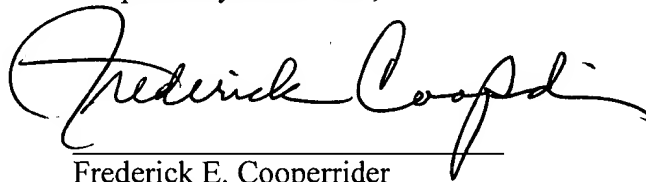
### III. FORMAL MATTERS AND CONCLUSION

In view of the foregoing, Applicant submits that claims 1-11, all the claims presently pending in the application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Assignee's Deposit Account No. 50-0510.

Respectfully Submitted,



Frederick E. Cooperrider  
Reg. No. 36,769

Date: 7/28/03

**McGinn & Gibb, PLLC**  
Intellectual Property Law  
8321 Old Courthouse Road, Suite 200  
Vienna, VA 22182-3817  
(703) 761-4100  
**Customer No. 21254**